

(2) Whether Plaintiff failed to state a plausible claim for violation of the Texas Insurance Code;

(3) Whether Plaintiff failed to state a plausible claim for recovery of attorneys' fees; and

(4) Whether Plaintiff failed to state a plausible claim for breach of special and/or fiduciary relationship.

II.

SUMMARY OF THE ARGUMENT

As set forth in Willis's Brief in Support of its Motion to Dismiss, Plaintiff's Texas Insurance Code and breach of special and/or fiduciary relationship claims, together with its demand for attorneys' fees, should be dismissed under Federal Rule of Civil Procedure 12(b)(6) and pursuant to Illinois law.

The claims in the First Amended Complaint each derive from defendant Lexington Insurance Company's denial of insurance coverage and alleged failure to fully compensate Plaintiff under a policy of insurance. Willis is an independent insurance broker and the Complaint alleges that Willis misrepresented to Plaintiff that it was fully covered under the at-issue insurance policy and otherwise failed to act in accordance with the applicable standard of care. (Dkt. #12, Compl. ¶¶ 28, 30, 32, 34.) The Complaint further alleges that, by making such misrepresentations, Willis violated the Texas Insurance Code and its fiduciary duty to Plaintiff. (Dkt. #12, Compl. ¶¶ 40, 44). But, the Complaint fails to state a plausible claim for either violations of the Texas Insurance Code or breach of fiduciary duty and fails to substantiate a demand for attorneys' fees against Willis.

First, because the dispute between Plaintiff and Willis is governed by Illinois law, the Complaint fails to state a claim for violations of the Texas Insurance Code (Section VII). *Second*, because the Texas Insurance Code claim fails as a matter of law, Plaintiff's demand for attorneys' fees, which is premised on that claim, must be dismissed. *Third*, the Complaint fails to state a claim for breach of a special and/or fiduciary relationship (Section VIII) because Illinois law does not permit such a claim under the circumstances alleged. As such, Plaintiff's Texas Insurance Code and breach of special and/or fiduciary relationship claims, together with its demand for attorneys' fees, should be dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendants Willis of Illinois, Inc. and Willis Towers Watson US LLC respectfully pray that the Court grant this Motion, dismiss Plaintiff's Texas Insurance Code and breach of fiduciary claims as against Willis, dismiss or strike Plaintiff's demand for attorneys' fees against Willis, and grant all other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS WILLIS
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WATSON US LLC**

Dated: June 12, 2019

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served by electronic means on all attorneys of record, in compliance with Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE, on this the 12th day of June 2019.

/s/Sheryl Kao

Sheryl Kao